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| 09/877,974   | 06/07/2001  | Devin F. Hosea       | 60136.0097US1       | 2589             |
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| Merchant & Gould - Cox<br>PO Box 2903<br>Minneapolis, MN 55402 |             |                      |                     |                  |
| EXAMINER   |             |                      |                     |                  |
| SHANG, ANNAN Q   |             |                      |                     |                  |
| ART UNIT   |             | PAPER NUMBER         |                     |                  |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/877,974

**Applicant(s)**

HOSEA ET AL.

**Examiner**

ANNAN Q. SHANG

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**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 169-199 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 169-199 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Notice of Informal Patent Application (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date: \_\_\_\_\_
- 6) ☐ Other: \_\_\_\_\_

Paper No(s)/Mail Date: 06/01/10

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/13/10 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 169-177, 180-187 and 190-197 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Herz et al (6,088,722)** in view **Alexander et al (6,177,931)**.

As to claims 169 and 170, Herz discloses system and method for scheduling broadcast of and access to video programs and other data using customer profiles and further discloses a set-top box for profiling iTV users and a method for profiling iTV users, comprising:

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A memory (col.46, lines 56-59) for providing an interactions database; and a processor (906, col.46, lines 46-59) coupled to the memory, the processor configured to:

Gathering user-related profile data at a client component (TV programs and advertisements) by monitoring interactions between an iTV user and an iTV to extract data received at the iTV, data transmitted by the user from the iTV and interactions between the user and the iTV; storing the gathered user-related profile data in an interaction database at the client component for processing at the client component to generate content recommendations; periodically retrieving the gathered user-related profile data in the interaction database; building a profile associated with the user of the iTV based on retrieving the gathered user-related profile data in the interaction database and data in a local categorized program database and identifying program(s) watched by the user (figs.1-11, abstract, col.5, lines 30-59, col.10, lines 15-30, col.12, lines 7-25, col.13, line 42-col.14, line 23, col.26, lines 38-53, col.27, lines 39-61 and col.30, line 18-col.31, line 30).

Presenting programming recommendations in an interactive program guide presenting programs to reflect a predicted interest of the user based on the profile associated with the user (col.10, lines 15-30, col.12, lines 7-25, col.13, line 42-col.14, line 23, col.26, lines 38-53, col.27, lines 39-61 and col.30, line 18-col.31, line 30). Herz further discloses **passive monitoring to gathers a user profile, i.e., “without direct interaction by the user”** (col.27, line 40-61 and col.30, line 17-col.34, line 14), which meets claim limitations “...wherein the user

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profile includes affinity and confidence measures for programs..." **further discloses gathering information on the Internet and other networks (col.52, lines 40-49).**

Herz does not clearly teach, presenting programming recommendations in an interactive PG, presenting programs rearranged to reflect a predicted interest of the user based on the profile associated with the user

In analogous art, **Alexander** teaches systems and methods for displaying TV programs, video, ads information, etc., and further presenting programming recommendations in an interactive PG, presenting programs rearranged to reflect a predicted interest of the user based on the profile associated with the user (figs.1-9, col.3, line 21-col.4, line 27, col.5, line 56-col.7, line 45, col.14, line48-col.15, line 1+ and col.30, line 45-col.31, line 1+), **note further that Alexander further discloses gathering profile information as the interacts to various websites.**

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Herz with the teaching of Alexander to provide various kinds of guide arrangements based on the user's preferences or profile.

As to claim 171, Herz further discloses where the gathering user-related profile data further comprises identifying demographic information associated with the user (col.12, lines 7-25 and col.35, lines 17-29).

As to claim 172, Herz further discloses where the gathering user-related profile data further comprises identifying psychographic information (col.12, lines

7-25 and col.35, lines 17-29).

Claim 173 is met as previously discussed with respect to claim 169.

Claim 174 is met as previously discussed with respect to claim 169.

As to claim 175, Herz further discloses where the building a profile associated with the user of the iTV based on the gathered user-related profile data in the interaction database and data in a local categorized program database further comprises combining the profiles of the programs viewed by the user to the developed profile of the user using an averaging algorithm (col.10, lines 15-30, col.12, lines 7-25, col.13, line 42-col.14, line 23, col.26, lines 38-53, col.27, lines 39-61 and col.30, line 18-col.31, line 30).

Claim 176 is met as previously discussed with respect to claim 169.

Claim 177 is met as previously discussed with respect to claim 169.

As to claims 180 and 181, the claimed "A set-top box...." is composed of the same structural elements that were discussed with respect to the rejection of claims 169-170.

Claim 182 is met as previously discussed with respect to claim 171.

Claim 183 is met as previously discussed with respect to claim 172.

Claim 184 is met as previously discussed with respect to claim 169.

Claim 185 is met as previously discussed with respect to claim 169.

Claim 186 is met as previously discussed with respect to claim 175.

Claim 187 is met as previously discussed with respect to claim 169.

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As to claims 190-191, the claimed "A computer readable medium including executable instructions...." is composed of the same structural elements that were discussed with respect to the rejection of claims 169-170.

Claim 192 is met as previously discussed with respect to claim 171.

Claim 193 is met as previously discussed with respect to claim 172.

Claim 194 is met as previously discussed with respect to claim 169.

Claim 195 is met as previously discussed with respect to claim 169.

Claim 196 is met as previously discussed with respect to claim 175.

Claim 197 is met as previously discussed with respect to claim 169.

4. Claims 178-179, 188-189 and 198-199 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Herz et al (6,088,722)** in view **Alexander et al (6,177,931)** as applied to claims 169, 180 and 190 above and further in view of **Gerace (5,848,396)**.

As to claim 178, Herz as modified by Alexander teaches the database being stored at the headend (col. 48, II. 37-51), wherein the database associates a plurality of programs with content associated profile information of viewers (col. 25, I1.45-64, fig. 1), but silent as to associating a plurality of URLs having content determined to match with the profile associated with the user of the iTV.

However, **Gerace** teaches building a profile and receiving a URL of the previously viewed web page and storing cookies and transmitting advertisements with contain URL for the advertisers depending on the selected programming (col. 6, II. 48-52; col. 13-14, I1.36-3).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Herz and Alexander, Yuen and Alexander by using web-sites (URLs) as user requested information as taught by Gerace in order to provide targeted marketing to the user (Gerace: col. 2, l1.30-34).

Regarding claim 179, Herz as modified by Alexander and Gerace are silent as to Web site rating service. However, Official Notice is taken that the use of a Web site rating service is well known.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herz as modified by Alexander and Gerace by using a web site rating service in order to accurately determine the content of the web-sites frequented by the user, thereby acquiring more detailed information of the user to better target the user with relevant programming and information.

Claims 188-189 are met as previously discussed with respect to claims 178-179.

Claims 198-199 are met as previously discussed with respect to claims 178-179.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 169-199 have been considered but are moot in view of the new ground(s) of rejection. The



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amendment to the claims necessitated the new ground(s) of rejection discussed above. **This office action is non-final.**

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Killian (6,163,316) discloses electronic programming system and method.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **ANNAN Q. SHANG** whose telephone number is **(571)272-7355**. The examiner can normally be reached on **700am-400pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Christopher S. Kelley** can be reached on **571-272-7331**. The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the **Electronic Business Center (EBC) at 866-217-9197 (toll-free)**. If you would like assistance from a **USPTO Customer Service Representative or access** to the automated information system, **call 800-786-9199 (IN USA OR CANADA) or 571-272-1000**.

**Annan Q. Shang**